Supreme Court of the United States

OCTOBER TERM, 1946.

NO. 343.

STATE OF NEW YORK, STATE OF DELAWARE, STATE OF INDIANA, ET AL., APPELLANTS,

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, STATE OF ALABAMA, ET AL.

NO. 344.

STATE OF MAINE, STATE OF NEW HAMPSHIRE, STATE OF VERMONT, ET AL., APPELLANTS,

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

NO. 345.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, BEAVER, MEADE AND ENGLEWOOD RAILROAD COMPANY, CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, ET AL., APPELLANTS,

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, STATE OF ALABAMA, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE STATE OF MINNESOTA.

J. A. A. BURNQUIST,
Attorney General.

GEORGE T. SIMPSON,
Special Counsel,
Attorneys for the State of Minnesota.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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BRIEF FOR THE STATE OF MINNESOTA.

STATEMENT.

In Behalf of the State of Minnesota.

These are appeals from a judgment entered in a Court of three judges constituted in accordance with the provisions of the Urgent Deficiency Act sitting in the District Court of the United States for the Northern District of New York.

In that Court, two suits were brought pursuant to 28 USCA Sections 41 (28) and 43-48, inclusive, and also under the general jurisdiction of the Court in equity to enjoin, annul, set aside and suspend the order of the Interstate Commerce Commission herein.

The first suit was brought against the United States and the Interstate Commerce Commission, as defendants, by the State of New York and certain other states within official territory to enjoin, set aside, annual and suspend orders of the Interstate Commerce Commission requiring an increase of 10% in what are called the class rates charged by the railroads transporting freight in such territory; and a decrease of 10% in the class rates charged by the railroads, transporting freight in Southern territory, Western Trunk Line territory and Southwestern territory. Interterritorial rates were likewise involved.

Subsequent thereto, the New England States, acting through their respective Governors, intervened in such suit.

Finally the Atchison, Topeka and Santa Fe Railway Company, and some 30 odd railroad companies serving the Western Trunk Line territory and the Southwestern territory, brought a second suit, and in addition to the claims made in the case in which the State of New York and other states were plaintiffs, claimed confiscation by reason of the order of the Commission; and then intervened in the first suit in support of the plaintiffs therein.

The two suits were consolidated for trial. Each of the States including the State of Minnesota in Western Trunk Line territory, Southwestern territory and Southern territory were permitted to intervene; and did so in behalf of the defendants.

On trial before the District Court, the Western Lines were allowed, over the objection of the defendant to introduce evidence as to the alleged confiscatory character of the order of the Commission. This was received by the Court, subject to a motion to strike, on which decision was

reserved until the close of the hearing. Thereupon, the motion to strike was denied by the Court on the authority of *Baltimore & Ohio Railroad* v. *United States*, 298 U.S. 349.

During trial the evidence received by the Commission was offered to the Court, was received, has since been printed and is now on file with this Court. It consists of 21 volumes with a total of 12,719 pages.

The Commission in the order here involved made findings as to certain facts; and the trial court found that such findings of fact were supported by "substantial" evidence. Such findings of fact were thereupon adopted by the trial Court, the order of the Commission affirmed and judgment entered dismissing the petition in each case, but without prejudice to other suits by the Western Lines if after a fair test the interim rates are found to be confiscatory.

Separate appeals were taken from such jujdgment (343, 344, and 345).

In sustaining the order of the Commission, the trial Court points out that a review of such order by that Court is limited to the following considerations:

(1) whether the order is based upon adequate findings;

(2) whether there is substantial evidence in the record to support the findings made; and

(3) whether the record was made at a result of adequate hearing of which due notice was given to all interested parties and at which those who appeared were fairly permitted to present their evidence and be heard in argument.

The trial Court answered each such question in the affirmative.

By these appeals there is thus brought before this Court for consideration:

(a) the validity of the statute as applied to the facts herein;

(b) the validity of the claim of the absence of substantial evidence to sustain the findings of fact of the Commission and adopted by the trial Court; and

(c) the validity of the claim of confiscation.

The exhaustive brief filed by the United States covers the entire ground in relation thereto so completely and so competently, that to file another brief covering the same subject matter, it is believed would only serve to tax the patience of the Court. Hence, no further brief on behalf of the State of Minnesota on these appeals will be filed.

The State of Minnesota on the record supported the position of the United States and the Interstate Commerce Commission; and now files this statement and brief in this court as notice of like intent.

February 25, 1947.

Respectfully submitted,

J. A. A. BURNQUIST,
Attorney General.

GEORGE T. SIMPSON,
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St. Paul, Minnesota.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

Nos. 343, 344, 345.

THE STATES OF NEW YORK, DELAWARE, *et al., Appellants,*

vs.

THE UNITED STATES OF AMERICA, *et al., Appellees.*

THE HONORABLE HORACE A. HILDRETH, Governor of the State of Maine, *et al., Appellants,*

vs.

THE UNITED STATES OF AMERICA, *et al., Appellees.*

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, *et al., Appellants,*

vs.

THE UNITED STATES OF AMERICA, *et al., Appellees.*

Appeals from the United States District Court
For the Northern District of New York.

CERTIFICATE OF SERVICE.

I certify that true copies of the Brief for the State of Minnesota were this day mailed to counsel of record, as follows:

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Dated this 25th day of February, 1947.

GEORGE T. SIMPSON,
Special Assistant to the Attorney General of Minnesota.

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Nos. 343, 344, 345

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THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, ET AL., APPELLANTS

v.

THE UNITED STATES OF AMERICA, ET AL., APPELLEES

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

MOTION TO ADVANCE AND FOR DIMINUTION OF PRINTED RECORD

In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 343

THE STATES OF NEW YORK, DELAWARE, ET AL., APPELLANTS

v.

THE UNITED STATES OF AMERICA, ET AL., APPELLEES

No. 344

THE HONORABLE HORACE A. HILDRETH, GOVERNOR OF THE STATE OF MAINE, ET AL., APPELLANTS

v.

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No. 345

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, ET AL., APPELLANTS

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THE UNITED STATES OF AMERICA, ET AL., APPELLEES

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK

716559—46

MOTION TO ADVANCE AND FOR DIMINUTION OF PRINTED RECORD

Come now the United States of America, the Interstate Commerce Commission, and the other appellees herein, and move (1) that these companion cases be advanced on the docket, and (2) that the original transcript of oral testimony and the original exhibits which constituted the evidence before the Interstate Commerce Commission and are now on file with the Clerk of the Court as part of the record on appeal, be ordered not printed (reserving to all parties the right to refer in briefs and oral argument to any of said evidence, the same as if it had been printed in full), and, as grounds for said motion, assign the following:

These cases are here on direct appeals, allowed by the District Court on June 25, 1946, under the provisions of the Act of October 22, 1913, c. 32, 38 Stat. 220, U. S. C. Title 28, secs. 47 and 47a, and have statutory priority, precedence, and the right to be in every way expedited, under the language of these statutes.

These cases involve the validity of an order of the Interstate Commerce Commission entered May 15, 1945, which had as its object the ultimate equalization of railroad class freight rates between the northeastern, southern, and western parts of the United States, and was based on findings of serious and far-reaching unreasonableness

and discrimination in the existing rate structure, in violation of the Interstate Commerce Act. The entire United States, except the area west of the Rocky Mountains, was directly affected by such order. The direct effect on the shippers and receivers of freight involved was estimated under oath, in the District Court, at approximately $2,000,000 per month.

An injunction against the operation of the order, issued by the District Court on December 13, 1945, is still in effect and will continue until the final determination of these appeals, in spite of the unanimous opinion of the District Court upholding the validity of the Commission's order on all grounds, and adopting as its own all the Commission's findings of fact.

The transcript of testimony and the exhibits which constituted the evidence before the Interstate Commerce Commission are extremely voluminous, consisting of more than 5,000 pages of oral testimony and 12,000 pages of exhibits, with many of the exhibits in such chart or tabular form as do not lend themselves readily to reduction to a satisfactory printed record. In their original form, as lodged here with the Clerk, they have been so arranged that it is believed they are susceptible of ready and convenient access and handling.

In view of the fact that, under the stay granted by the District Court, appellants will continue, until the final determination of these cases by the

Court, to have the benefit of the rates which the Commission has found to be unlawful, to the extent of $2,000,000 per month directly calculable, appellees have sought, through negotiation with appellants beginning prior to the lodging of the original record with the Clerk of this Court in July, 1946, to arrange to have the printing of the record on appeal expedited, but wholly without success. Appellants have declined to put up the money the Clerk requires to authorize the start of the printing in advance of the noting of probable jurisdiction, although well knowing that appeals in these cases are a matter of statutory right, and they have declined to enter into any stipulation to dispense with the printing of any part of the evidence before the Commission. Appellees are advised by the Clerk that the printing of the entire record, including the evidence before the Commission, will require at least four months, whereas the printing of all of the record on appeal except the evidence before the Commission could be completed expeditiously.

If the Court finds that no serious inconvenience would be involved in utilizing the original evidence before the Commission, as distinguished from a printed version thereof, it is submitted that the parties would be in no way prejudiced if the printing of that part of the record were dispensed with, as has been the accepted practice pur-

suant to stipulation in a number of comparable cases. *Western Chemical Co.* v. *United States,* 271 U. S. 268, 270; *Georgia Commission* v. *United States,* 283 U. S. 765, 774n; *Atlanta B. & C. R. Co.* v. *United States,* 296 U. S. 33, 37; cf. *Mortensen* v. *United States,* 322 U. S. 369, 371–2. An order of this Court directing that the evidence before the Commission be not printed is the only remedy open to appellees to prevent many more months of serious and irreparable loss to tens of thousands of shippers and receivers of freight throughout the United States.

Respectfully submitted.

Tom C. Clark, *Attorney General;* J. Howard McGrath, *Solicitor General;* Wendell Berge, *Assistant Attorney General;* Edward H. Miller, David O. Mathews, *Special Assistants to the Attorney General;* for the United States of America.

Daniel W. Knowlton, *Chief Counsel;* Edward M. Reidy, *Assistant Chief Counsel;* for the Interstate Commerce Commission.

J. V. Norman, for the southern States of Alabama, et al.

Byron M. Gray, for the western States of Arkansas, et al.

George T. Simpson, for the State of Minnesota.

September 30, 1946.